

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

VCNM FARMS,)	
)	Case No. 95-RC-4-SAL
Employer,)	
)	21 ALRB No. 9
and)	(October 18, 1995)
)	
UNITED FARM WORKERS OF)	
AMERICA, AFL-CIO,)	
)	
Petitioner.)	
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DECISION AFFIRMING DISMISSAL OF ELECTION
OBJECTIONS AND CERTIFICATION OF REPRESENTATIVE

This case is before the Agricultural Labor Relations Board (ALRB or Board) on a request for review filed by VCNM Farms (Employer) of the Executive Secretary's attached order dismissing the Employer's election objections in their entirety. The tally of ballots from the election conducted on August 17, 1995, showed the following results:

United Farm Workers.....	332
No Union	50
Unresolved Challenged Ballots.....	<u>8</u>
Total	390

On August 24, 1995, the Employer timely filed objections to the election with the Executive Secretary of the Board. On September 5, 1995, the Executive Secretary issued his Notice of Dismissal of Election Objections, finding that the objections and supporting evidence failed to establish a prima facie showing that the election was not conducted properly or that there had been preelection misconduct which interfered with employee free choice and affected the results of the election.

On September 13, 1995, the Employer filed its Request for Review of the Executive Secretary's Order Dismissing Election Objections with the Board. The Employer's request for review does not present any argument or analysis responding to the Executive Secretary's dismissal, but states merely "the Company hereby requests the Board to review the order of the Executive Secretary, including his denial of a hearing on the objections." The Request's only further content is a listing of documents that were originally filed with the Executive Secretary in support of the Objections, and those required by Board Regulations section 20393(a)(2) through (5) (Cal.Code of Regs., tit. 8, sec. 20393(a)) (the representation petition, tally of ballots, objections and supporting declaration of Steven D. Nelson, notice of election, Executive Secretary's Order Dismissing Objections, Proof of Service).

Board Regulations section 20393(a) creates the procedure for requests for review of Executive Secretary-dismissals and requires that "[t]he request shall set forth with particularity the basis of the request. . . ."¹

The Employer's Request for Review of the Executive Secretary's Order fails to address the Executive Secretary's findings and analysis at all, and certainly not with particularity. The Employer made no effort to specify grounds

¹The same "with particularity" language appears in Regulations section 20220(a), requiring that complaints "specify with particularity" the conduct alleged to constitute an unfair labor practice.

for overruling the Executive Secretary beyond refiling its objections and single supporting declaration. Moreover, Board Regulations section 20393(a) states that the request for review shall be accompanied by " (1) the evidence and legal arguments which the party seeking review contends support the request." The only evidence submitted is the five page declaration of Employer General Manager Steven D. Nelson. The only material that could be said to constitute "legal arguments" is the copy of the election objections themselves, which cites no authority other than Regulations section 20900, which governs the number and identification of organizers taking access to an employer's property.

As a consequence of the Employer's non-compliance with our regulation, it has shown no reason for us to change the Executive Secretary's action. The Executive Secretary's extensive analysis of the objections on its face shows no deficiencies, and the Request for Review fails to develop or demonstrate any reason for us to disturb the Executive Secretary's dismissal.

Accordingly, the Board affirms the Executive Secretary's dismissal of the Employer's objections petition and certifies Petitioner, United Farm Workers of America, AFL-CIO, as the exclusive representative of the employees.

CERTIFICATION

It is hereby certified that a majority of the valid votes has been cast for the United Farm Workers of America,

AFL-CIO and that, pursuant to Labor Code section 1156, the said labor organization is the exclusive representative of all agricultural employees of VCNM Farms in the State of California for purpose of collective bargaining as defined in section 1155.2(a) concerning employees' wages, hours and other terms and conditions of employment.

DATED: October 18, 1995

MICHAEL B. STOKER, Chairman

IVONNE RAMOS RICHARDSON, Member

LINDA A. FRICK, Member

CASE SUMMARY

VCNM FARMS
(UFW)

21 ALRB No. 9
Case No. 95-RC-4-SAL

Background.

Pursuant to a Petition for Certification filed by the United Farm Workers of America, AFL-CIO (UFW or Union) , the Regional Director of the Salinas Region of the Agricultural Labor Relations Board (ALRB or Board) conducted a representation election among all the agricultural employees of VCNM Farms (Employer) on August 17, 1995. The tally of ballots revealed the following results: UFW, 332; No Union, 50, and 8 challenged ballots which were left unresolved because they were not sufficient in number to have affected the outcome of the election.

Thereafter, the Employer timely filed objections to the election which the Executive Secretary of the Board dismissed in their entirety because they failed to establish conduct which established a prima facie showing that the election was not conducted properly or that there was misconduct which interfered with employee free choice.

Board Decision

Upon the filing by the Employer of a Request for Review of the Executive Secretary's dismissal of objections, the Board considered the Employer's submissions and concluded that they failed to state grounds which would warrant an overruling by the Board of the Executive Secretary's dismissal. Accordingly, the Board affirmed the results of the election and certified the UFW as the exclusive representative of all of the Employer's agricultural employees in the State of California.

State of California
AGRICULTURAL LABOR RELATIONS BOARD

Estado de California
CONSEJO DE RELACIONES DE TRABAJADORES AGRICOLAS

In the Matter of:

VCNM FARMS,
Employer,
and
UNITED FARM WORKERS OF AMERICA, AFL-CIO,
Petitioner.

Case No. 95-RC-4-SAL
Caso Num.

CERTIFICATION OF REPRESENTATIVE
CERTIFICACION DEL REPRESENTANTE

An election having been conducted in the above matter under the supervision of the Agricultural Labor Relations Board in accordance with the Rules and Regulations of the Board; and it appearing from the Tally of Ballots that a collective bargaining representative has been selected; and no petition filed pursuant to Section 1156.3(c) remaining outstanding;

Habiendose conducido una eleccion en el asunto arriba citado bajo la supervision del Consejo de Relaciones de Traba/adores Agricolas de acuerdo con las Reg/as y Regulaciones del Consejo; y apareciendo por la Cuenta de Votos que se ha seleccionado un representante de negociacion colectiva; y que no se ha registrado (archivado) una peticion de acuerdo con la Seccion J 156.3(c) que queda pendiente;

Pursuant to the authority vested in the undersigned by the Agricultural Labor Relations Board, IT IS HEREBY CERTIFIED that a majority of the valid ballots have been cast for

De acuerdo con la autoridad establecida en el suscribiente por el Consejo de Relaciones de Traba/adores Agricolas, por LA PRESENTE SE CERTIFICA que la mayor/a de las balotas validas han sido depositadas en favor de

United Farm Workers of America, AFL-CIO

and that, pursuant to Section 1156 of the Agricultural Labor Relations Act, the said labor organization is the exclusive representative of all the employees in the unit set forth below, found to be appropriate for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

y que. de acuerdo con la Seccion 1156 del Acto de Relaciones de Traba/adores Agricolas, dicha organizacion de trabajadores es el representante exclusive de todos los trabafadores en la unidad aquumplificada, y se ha determinado que es aproplada con el fin de llevar a cabo negociacion colectiva con respecto al salario, las horas de trabajo, y otras condiciones de empleo.

UNIT: All the agricultural employees of VCNM Farms in the State of California
UNIDAD:

Signed at Sacramento

On behalf of

On the 18th day of October, 1995

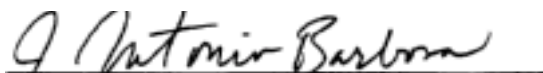
AGRICULTURAL LABOR RELATIONS BOARD

Firmado en _____

De parte del

En el día de , 19

CONSEJO DE RELACIONES DE TRABAJADORES AGRICOLAS



J. ANTONIO BARBOSA

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STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:)	
)	
VCNM FARMS,)	Case No. 95-RC-4-SAL
)	
Employer,)	
)	
and)	NOTICE OF DISMISSAL
)	OF ELECTION OBJECTIONS;
UNITED FARM WORKERS OF)	NOTICE OF OPPORTUNITY
AMERICA, AFL-CIO,)	TO FILE REQUEST FOR REVIEW
)	
Petitioner.)	

PLEASE TAKE NOTICE that, pursuant to Labor Code section 1156.3 (c) and Title 8, California Code of Regulations section 20365, the Employer's timely filed objections to the representation election in the above-captioned matter fail to establish prima facie evidence of substantial and material factual issues which would serve to indicate that the election conducted by the Agricultural Labor Relations Board (ALRB or Board) on August 17, 1995 was not conducted properly or that there was preelection misconduct which interfered with employee free choice and affected the results of the election.

(Lindeleaf v. Agricultural Labor Relations Bd. (1986) 41 Cal.3d 861 [226 Cal.Rptr. 119]; J.R.Norton Co. (1979) 26 Cal.3d 1 [160 Cal.Rptr.710] .) Accordingly, since the objections do not establish conduct which is such that, by an objective standard, would warrant the setting aside of the election, all of the objections are hereby DISMISSED for the reasons discussed below.

1 OBJECTIONS NOS. 1. 2. 3 and 4. alleging that
2 representatives of the petitioning union, United Farm Workers of
3 America, AFL-CIO (UFW or Union), took access to the Employer's
4 premises one day preceding its filing of the requisite Notice of
5 Intent to Take Access (NA, described below) and thereafter
6 following the filing of such a Notice continued to violate the
7 time and manner provisions of the Board's access regulations
8 and, in addition, refused to identify themselves or vacate the
9 premises when so requested by the Employer. (Title 8, California
10 Code of Regulations, section 20900, et seq.)

11 Objection No. 1 states that early in the morning of
12 August 15, 1995, the day before the NA was filed, two named UFW
13 organizers and other representatives of the Union, along with 10
14 to 15 other individuals, took access to the Barcellos Ranch a
15 remained on the premises continuously for 30 hours. It is
16 alleged in Objections Nos. 2 and 3 that, following the filing of
17 the NA, about 13 Union officials and/or organizers took access
18 to Barcellos as well as two additional ranches on August 16 and
19 17 and failed to wear identification badges or otherwise
20 identify themselves. Objection No. 4 describes the refusal of
21 the access takers to heed the Company's request to vacate the
22 premises.

23 In support of the objections described above, Steven D.
24 Nelson, the Employer's general manager, declared that VCNM Farms
25 produces strawberries on a portion of each of three ranches referenced
26 in the objections. Upon arriving at the Barcellos Ranch on the morning
27 of August 15, Nelson found a

1 group that had gathered in the Company's parking lot. Many of
2 those in attendance carried UFW flags. Nelson asked persons he
3 perceived to be Union organizers to identify themselves, only
4 one did so. Later in the day, having ascertained that no NA had o
5 been filed, Nelson returned to Barcellos to ask the organizers
6 to leave. They refused and, along with persons described by
7 Nelson as employee supporters, remained on the Barcellos Ranch
8 all night where they brought in portable toilets and lit fires.

9
10 Around noon the next day, after Nelson's repeated
11 requests to the organizers, as well as others who were not
12 willing to work, to remove themselves to the public roadway were
13 rebuffed, he called the Monterey County Sheriffs Department for
14 assistance. Nelson further declared that the organizers and/or
15 others did not leave the premises until Sheriff's deputies
16 warned them that they were trespassing and brought in buses to
17 effectuate an arrest.

18 The Board's regulations cited by the Employer (i.e.,
19 various provisions of Title 8, California Code of Regulations
20 section 20900, et seq.) provide that organizers are permitted
21 entry to an employer's premises in order to meet with employees
22 up to one hour prior to the start of work and one hour after
23 they have completed work in places where employees normally
24 gather at those times. In addition, organizers may take midday
25 access to the work site for up to one hour in order to meet with
26 employees during either an established lunch period or during
27 the time employees are actually taking lunch. (Cal. Code Regs.,

1 tit. 8, sec. 20900, et seq.)¹ A Notice of Intent to Take
2 Access (the NA) must be served on the Employer and filed in the
3 appropriate Regional Office before nonemployee organizers may
4 take preelection organizational access to the work site prior to
5 the filing of a petition for certification. The UFW filed the
6 NA on August 16, 1995, concurrently with its filing of the
7 Petition for Certification in which it alleged that the
8 employees were on strike and requested that the ALRB conduct an
9 expedited strike election pursuant to Labor Code section
10 1156.3(a)(4) . Any access taken prior to either the filing of
11 the NA or the petition for certification would be outside the
12 access regulation.²

13 The Employer has demonstrated that, prior to the filing of
14 the NA as well as following the filing of the certification petition,
15 the UTW took access which exceeds the parameters of the Board's access
16 regulation. The gravamen of the situation here is that the excess access
17 described by the

19 ¹Although it is undisputed that the Employer's employees were on
20 strike on August 15, 1995, prior to the filing of the NA or the
21 certification petition, the DFW would not have been entitled to
22 "strike access" as that term is defined in Bruce Church (1981) 7
23 ALRB No. 20 because such access is available only to labor
24 organizations certified by the Board following an ALRB conducted
election and, further, permits unions to communicate with
nonstriking employees during their mid-day lunch break.

25 ²It does not appear from the Employer's objections and declaratory
26 support that employees were actually performing work or that the
27 Union representatives entered the fields to talk to workers during
times pertinent herein. Rather, it would appear that access, in the
main, was confined to what the Employer has described as a "staging"
area near a parking/office complex.

1 Employer is more akin to activity on a picket line and/or
2 trespass. The Employer ultimately, and with the concurrence of
3 the Sheriff, characterized the situation as one of trespass.
4

5 Were the question to be limited to whether the UFW
6 violated the right to take preelection organizational access
7 under the access rule, rather than participation in picket line
8 or other strike activity, the inevitable conclusion would be
9 that the Union violated the rule when it took access on August
10 15 without having first filed an NA, and thereafter when it
11 remained on the Employer's premises for upwards of 30 hours,
12 refusing to leave upon request, and failing to require its
13 organizers to wear identification badges. Assuming, however,
14 for purposes of discussion, that the access in dispute herein
15 was solely organizational access, the evidence nevertheless
16 would not sustain an objection calling for invalidation of the
17 election.

18 Prior decisions concerning allegations of violations
19 of the access rule demonstrate the Board's sensitivity to
20 violations of the access regulation. However, the pivotal
21 inquiry in all such cases is whether the regulation was violated
22 in a manner which, by an objective standard, would compromise
23 the employees' ability freely to choose or to reject union
24 representation. In all such cases, the Board strives to balance
25 the right of employees to receive information in order that they
26 be able to cast an informed vote and the right of employers to
27 continue operations and maintain order in the work place.

As the Board explained in K.K.Ito Farms (1976) 2 ALRB No. 51,

sl.op at p. 7:

While the access regulation is stated in terms of defining rights of employees under Labor Code section 1152 and therefore acts as a limitation on employer conduct, we think that the clear import of its specification of times for access and numbers of organizers is that it is a limitation on union conduct as well. We do not find, however, that any interference by an employer with the fullest exercise of the right of access granted by the regulation nor any access taken by a labor organization which exceeds the limitations of the access regulation per se constitutes misconduct affecting the results of the election and thus warranting the setting aside of the election. Instead, allegations of violations of the access regulation by either an employer or a labor organization will be assessed in each case to determine whether it is of such character as to affect the employees' free choice of a collective bargaining representative.

Similarly, in Frudden Enterprises, Inc. (1981) 7 ALRB No. 22, the Board found that the union had failed to properly file an NA and, in addition, organizers who did not wear identification badges took access to the work site at times and in numbers outside the access regulation, including organizing while employees actually were working, and engaged in disruptive conduct. The Board adopted the recommendation of the Investigative Hearing Examiner that notwithstanding proven violations of the access rule as well as certain incidents of violence which occurred during periods of excess access, the incidents did not warrant the setting aside of the election because they were not of such character as would affect the outcome of the election. (See, e.g., Georae Arakelian Farms, Inc. (1978) 4 ALRB No. 6.) In Lindeleaf v. Agricultural Labor Relations Board, supra. 41 Cal.3d 861, the court rejected the employer's argument that there should be a per se rule of

1 setting aside elections on grounds of a union's violations of
2 the access rule. Where, as here, an employer alleges only that
3 a union took excess access without having shown prima facie
4 that, in that process, there was coercive conduct which would
5 tend to create fear or have other coercive impact which would
6 affect voting, the objection does not establish grounds for
7 setting aside the election.

8
9 OBJECTION NO. 5. alleging that Union representatives
10 used coercive tactics in order to block the Company's attempt to
11 persuade employees to return to work. As Nelson declared, while
12 in the company of a labor consultant retained by VCNM on the
13 morning of August 16, 1995, he tried several times to persuade
14 employees to return to work, even offering to increase wages and
15 benefits. Finally, a group of an estimated 50 to 70 employees
16 accepted Nelson's offer and proceeded to follow him into the
17 fields. They were met by two UFW organizers and two other persons,
18 possibly also Union representatives, who exhorted the
19 employees to hold out for a contract before resuming work.

20 There is no showing that the Union prevented the
21 employees from resuming work by threatening violence, or
22 engaging in actual violence, or using physical force to restrain
23 them. The record merely reflects that the employees were
24 momentarily detained and were subjected to two messages, one
25 I from the Employer and the other from the Union and ultimately
26 I may have chosen to listen to one of them. It is not clear
27 whether or not they returned to work.

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2 OBJECTIONS NOS. 6 and 7, which allege, respectively
3 that by holding the election within 31 hours of the filing of
4 the Petition for Certification, Board agents failed to give the
5 Employer sufficient time to prepare an accurate roster of its
6 employees names and addresses or to meet with its employees
 prior to the election.

7
8 Whenever the Regional Director determines that a
9 majority of the agricultural employees of an employer are on
10 strike at the time a petition for certification is filed,
11 Labor Code section 1156.3(a) imposes an obligation to attempt to hold
12 the election within 48 hours. For that reason, by virtue of
13 Title 8, California Code of Regulations section 20377 (c), the
14 Board has authorized its Regional Directors to establish
15 procedures for expediting the receipt of information necessary
16 to investigate the petition and, by its express terms, to
17 shorten the time allowed for the employer's response to the
18 petition and submission of employees' names and addresses. The
19 fact that the employees were on strike is not disputed.

20 There is no showing that the Regional Director
21 exceeded his authority or abused his discretion either in
22 setting the time of the election or attempting to expedite
23 receipt of the Employer's list of employee names and
24 addresses.³ The Employer's implied assertion of prejudice

25 ³It is statutorily mandated that employers shall maintain
26 accurate and current lists of their employees names and
27 addresses and shall make such lists available to the ALRB upon
 request. (Labor Code Section 1157.3.) The statutory
 language contemplates that such lists will be accurate and
 available at all times. Exhibits submitted by the Employer

1 suffered as a result of its abbreviated opportunity to campaign
2 during the expedited election process is unavailing as the
3 Legislature specifically rejected this argument in enacting the
4 provisions of Labor Code section 1156.3(a)(4). (Perez Packing
5 Co., Inc. (1939) 15 ALRB No. 19; see, also, Muranaka Farms
6 (1983) 9 ALRB No. 20 [election held 23 hours following filing of
7 petition for certification].)As expressed by the Investigative
8 Hearing Examiner in Perez Packing, supra. 15 ALRB No. 19, "[t]he
9 disadvantage it complains about during this period were inherent
10 in the nature of the strike and in the nature of the
11 relationship between employers and employees during a strike;
12 they do not derive from anything the Regional Director did."

13 In the final analysis, "[t]he test is not whether
14 optimum practices were followed, but whether on all the facts
15 the manner in which the election was held raises a reasonable
16 doubt as to its validity." NLRB v. ARA Services, Inc.
17 (3d Cir. 93) 717 F.2d 57, 69 [114 LRRM 2377].)⁴

18 In sum, the Employer has failed to establish either
19 that (1) the Union engaged in objectionable conduct which would
20 tend to interfere with employee free choice sufficient to affect
21 the results of the election or (2) that the Regional Director
22 exceeded his authority or otherwise abused his discretion in
23

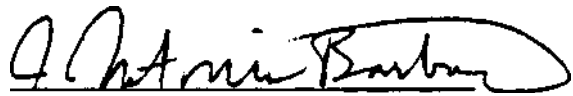
24 reflect that the Regional Director granted two extensions of the initial time
25 table submitted to the Employer. The Employer has not made any showing that
26 it was unable to prepare its response within the second extension.

27 ⁴The Employer's complaints about the timing of the election are
expressed in conclusionary terms with no declaratory support.

1 setting the times for the election and the receipt of election
2 related information.

3 PLEASE TAKE FURTHER NOTICE that pursuant to Title 8,
4 California Code of Regulations, section 20393 (a) , the Employer
5 may file a request for review of the Executive Secretary's
6 Dismissal of the Employer's Objections Petition with the Board
7 by September 12, 1995.⁵

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9 DATED: September 5, 1995

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11 J. ANTONIO BARBOSAT
12 Executive Secretary, ALRB
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25 ⁵The five-day filing period is calculated in accordance with
26 the provisions of Title 8, California Code of Regulations,
27 section 20170, which excludes intervening Saturdays, Sundays
and holidays. All parties must be served with the request for
review in accordance with Title 8, California Code of
Regulations, section 20166.